

JOHN A. MARISCOTTI
EXECUTIVE VICE PRESIDENT
AND CHIEF FINANCIAL OFFICER

NATIONAL RAILWAY UTILIZATION CORP.

1100 Centre Square East / 1500 Market Street / Philadelphia, Pennsylvania 19102 / (215) 569-2220

9813-A
RECORDATION NO. Filed 1425

NOV 1 1978-10 45 AM

INTERSTATE COMMERCE COMMISSION

October 31, 1978

Interstate Commerce Commission
Washington, DC 20423

Attention: Secretary

Dear Sir:

RECORDATION NO. 9813 Filed 1425

NOV 1 1978-10 45 AM

INTERSTATE COMMERCE COMMISSION

It is hereby respectfully requested that the following documents be recorded pursuant to the provisions of Section 20c of the Interstate Commerce Act:

8-305AC29

Conditional Sale Agreement, dated as of October 15, 1978:

No.

Date NOV 1 1978

Fee \$50.00

ICC Washington, D. C.

Vendor - Whittaker Corporation (Berwick Forge & Fabricating Division)
West Ninth Street
Berwick, Pennsylvania 18603

Vendee (Purchaser) - National Railway Utilization Corporation
1100 Centre Square East
1500 Market Street
Philadelphia, Pennsylvania 19102

RECEIVED
Nov 1 10 38 AM '78

I.C.C.
FEE OPERATION BR.

2. Agreement and Assignment (of Conditional Sale Agreement), dated as of October 15, 1978:

Assignor (Vendor-Builder) - Whittaker Corporation
(Berwick Forge & Fabricating Division)
(address as stated above)

Assignee - The Life Insurance Company of Virginia
6610 West Broad
Richmond, Virginia 23260

General Description of the Equipment:

50 Boxcars, Type XM, 50'-6", 70-Ton, 42 thereof bearing Middletown and New Jersey Railway Company Road Numbers MNJ 120693 to MNJ 120734 (both inclusive), 8 thereof bearing National Railway Utilization Corporation Road Numbers NSL 150275 to NSL 150282 (both inclusive), and each being marked: "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c".

Sincerely yours,

John A. Mariscotti

JAM:met

Interstate Commerce Commission
Washington, D.C. 20423

10/

OFFICE OF THE SECRETARY

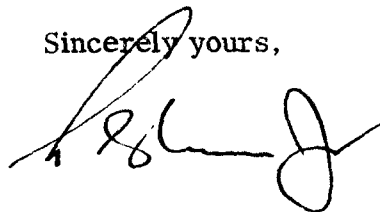
11/1/78

John A. Mariscotti
National RYW. utilization Corp
1100 Centre Square East
1500 Market Street
Phila. Pa. 19102

Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on 11/1/78 at 10:45am,
and assigned recordation number(s) 9813 & 9813-A

Sincerely yours,



H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. 811 Filed 1425

10/23/78

NOV 1 1978 - 10 45 AM
INTERSTATE COMMERCE COMMISSION

EXHIBIT A
TO
PARTICIPATION AGREEMENT

CONDITIONAL SALE AGREEMENT

Dated as of October 15, 1978

between

NATIONAL RAILWAY UTILIZATION CORPORATION

and

WHITTAKER CORPORATION (BERWICK FORGE
& FABRICATING DIVISION)

CONDITIONAL SALE AGREEMENT dated as of October 15, 1978, between WHITTAKER CORPORATION (BERWICK FORGE & FABRICATING DIVISION) (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), and NATIONAL RAILWAY UTILIZATION CORPORATION (hereinafter called the Vendee).

WHEREAS, the Builder agrees to assemble and construct, and to sell and deliver to the Vendee, and the Vendee agrees to purchase, that number of units of railroad equipment described in Annex B hereto (hereinafter called the Equipment) which is accepted hereunder by the Vendee on or prior to December 31, 1978 (and which, if less than the number specified in Annex B, is to be specifically described by supplement hereto subject to the provisions hereof); and

WHEREAS, THE LIFE INSURANCE COMPANY OF VIRGINIA (hereinafter sometimes called the Assignee or the Vendor) is agreeing to finance as Investor 75% of the cost of the Equipment pursuant to the Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), among the Assignee, the Vendee, and the Investor, in the form annexed hereto as Annex C;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1 Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has assembled and manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being

of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has assembled and manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 2 Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the number of units of the Equipment described in the first WHEREAS clause of this Agreement, it being understood that the Equipment shown on Annex B hereto not accepted pursuant to this Article 2 on or before December 31, 1978, shall be excluded from this Conditional Sale Agreement and not included in the term Equipment, and the Vendor and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore accepted and settled for hereunder. Each unit of the Equipment shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing among the Builder and the Vendee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of assembly and manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, including units intended for interchange, and each such unit will be new railroad equipment. As and when any Equipment shall from time to time be accepted by the Vendee hereunder within the limitations described in the first WHEREAS clause of this Agreement as evidenced by the Vendee's Certificate of Acceptance, the same shall be deemed accepted hereunder and shall ipso facto and without further instrument pass under and become subject to all the terms and provisions hereof.

ARTICLE 3 Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement and the Assignment have been filed pursuant to Section 20c of the Interstate Commerce Act; and provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the second sentence of the first paragraph of this Article 3 and any Equipment not delivered and accepted hereunder (including payment therefor pursuant to the Assignment) on or prior to December 31, 1978, shall be excluded from this Agreement; provided, however, that the Vendee shall not thereby be relieved of its obligations to purchase such excluded units pursuant to purchase orders therefor which it may have entered into with the Builder, it being the intent of this provision, and of the similar provisions appearing in the first paragraph of Article 2 and the first paragraph of Article 4 merely to exclude such units from the provisions of this Agreement intended to provide for the financing of the Equipment on an installment purchase basis.

The Builder's obligation as to the time of delivery set forth in Schedule B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors. Any such delay shall not, however, operate to extend the Cut-Off Date (as hereinafter defined).

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee, and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof or the second paragraph of this Article 3 shall be ineffective, abinitio, to impose on the Assignee any liability, obligation or responsibility with respect thereto.

ARTICLE 4 Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Vendee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee plus any applicable sales tax set forth in the same or separate invoices also delivered to the Vendee; and, if the Purchase

Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Vendee (such invoice or invoices being hereinafter called the Invoices). If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid). The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date or dates (not later than December 31, 1978, such date being herein called the Cut-Off Date), occurring not more than ten days following presentation by the Builder to the Vendee of the Invoices and of the Certificate or Certificates of Acceptance for the Equipment.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to each Group (i) an amount equal to 25% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) 75% of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the Maximum Conditional Sale Indebtedness specified in Item 6 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 60 quarter-annual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each March 31, June 30, September 30 and December 31, commencing March 31, 1979, to and including December 31, 1993 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness from time to time outstanding shall bear interest from the Closing Date in respect of which such indebtedness was occurred at the rate of 10.5% per annum. Such interest shall be payable, to the extent accrued, on December 31, 1978 and on each Payment Date thereafter occurring. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall, in the aggregate, be substantially level and equal. The Vendee will furnish to the Assignee and the Builder promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Assignee, showing the respective amounts of principal and interest payable on each Payment Date. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 11.5% per annum.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The obligation of the Vendee to pay to the Vendor the amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 4 with respect to any Group shall be subject to the receipt by the Vendee of the documents required to be furnished by the Builder pursuant to Section 4 of the Assignment in respect of such Group.

ARTICLE 5 Security Interest in the Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee as provided in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment, and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6 Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions], all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that, so long as the Vendee is not then in default under this Agreement, the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, together with interest thereon at the rate of 11.5% per annum, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7 Maintenance; Casualty Occurrences; Insurance.

The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition and in compliance with the standards from time to time in effect under the Interchange Rules of the Association of American Railroads for use in interchange.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Vendee (or by any lessee of the Vendee) for a period of 90 consecutive days, except requisition for use by the United States Government (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit; provided, however, that the Vendee shall be obligated to make such payment, and thereby be entitled to the benefits of partial prepayment of the Conditional Sale Indebtedness (as hereinafter provided), only if such Casualty Value shall be in an amount not less than \$50,000. In the event that any Casualty Value, which would otherwise be payable in accordance with the provisions hereof, shall be less than \$50,000, payment shall be deferred until such time as the aggregate Casualty Value of units suffering a Casualty Occurrence shall be not less than such amount as aforesaid. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Assignee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Assignee may request. In the event of the requisition for use by the United States Government of any unit of the Equipment, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee, or to any requisitioning authority, as the case may be, of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee, or such authority, to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 7 with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee, provided that no default hereunder shall have occurred and be continuing. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

The Vendee will, at all times and at its own expense, cause to be carried and maintained all risk, physical loss and damage insurance in respect of the units of Equipment in an amount at least equal to the Casualty Value of such Units at the time subject hereto, and public liability insurance in amounts and against risks customarily insured against by others

in the Vendee's industry in respect of similar equipment. All policies evidencing such insurance shall contain an agreement by the insurers that such policies shall not be cancelled or the amount of coverage thereof or persons covered thereunder adversely changed without at least 30 days' prior written notice to the Vendor by the insurers or the insurers' authorized representative, as the case may be. The benefits of such insurance shall be payable to the Vendor as its interests may appear, so long as any of the Conditional Sale Indebtedness shall not have been paid in full, and thereafter to the Vendee.

ARTICLE 8 Reports and Inspections. On or before March 31 in each year, commencing with the year 1979, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9 Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the road numbers set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one-half inch in height, the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control

or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced, obliterated or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by any permitted lessee of the Equipment.

ARTICLE 10 Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part of any unit of the Equipment, the Vendee will conform therewith at its own expense; provided however, if no default exists hereunder, the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11 Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement. The Equipment will be used, on a regular basis, only within the continental United States

The parties hereto acknowledge that the Vendee, in the ordinary course of its business, intends to lease the Equipment to one or more railroad companies for use and operation within the continental United States. The right of possession and use of the Equipment of each and every lessee under any such lease shall be expressly subject to the rights of the Vendor under Article 16 hereof upon the happening of an event of default hereunder. The Vendee hereby assigns to Vendor all of Vendee's right, title and interest in all sums due and to become due under all such leases, together with the Vendee's right to all claims for damages arising out of the breach thereof, and all rights of the Vendee to terminate such lease, to perform thereunder and to compel performance of the terms thereof. Upon written instruction from the Vendor to the lessee (and without any further act being required of the Vendee in connection therewith), all sums payable under any such lease shall thereafter be paid by the lessee directly to the Vendor, it being understood and agreed by the parties hereto, however, that until default shall have occurred hereunder, the Vendor shall refrain from issuing any such instruction.

ARTICLE 12 Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim, so long as no default exists hereunder, and so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13 Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all of the Equipment.

The builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the

parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14 Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or (b) except with the prior written consent of the Vendor, sell, assign or otherwise dispose of its rights under this Agreement. Every such transfer, and every such sale, assignment or other disposition shall be expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, its rights and remedies upon the happening of an event of default hereunder).

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition,

that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

ARTICLE 15 Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder, or under the Participation Agreement or the Assignment, and such default shall continue for ten business days after the date such payment is due and payable; or

(b) the Vendee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any other agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) any other proceeding shall be commenced by or against the Vendee for any relief which includes or might result in, any modification of the obligations of the Vendee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant

to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days or after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(e) default shall occur (and any applicable grace period shall expire) under any instrument pursuant to which the Vendee shall be indebted for borrowed moneys.

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is

of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16 Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks as the Vendor reasonably may designate; or, in the absence of such designation, as the Vendee may select provided Vendor is notified in writing prior to moving the Equipment to such location;

(b) permit the Vendor to store the Equipment on such tracks or other premises at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad controlled by the Vendee or any of its affiliates or to any connecting

carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other

disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited first to principal, and other amounts not constituting interest payments, due Vendor hereunder or under the Participation Agreement or the Assignment, and thereafter to interest due the Vendor hereunder or under said other instruments.

Any sale hereunder may be held or conducted at such place or places, and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor or the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee shall be given written notice of such sale not less than ten days prior thereto, by telegram or

registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder. From and after the date of any such sale, the Vendee shall pay to the Vendor an amount equal to the interest rate (applicable in respect of overdue amounts as specified in Article 4 hereof) on the unpaid Conditional Sale Indebtedness with respect to such unit which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments of default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement,

the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17 Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18 Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19 Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20 Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first-class mail, postage prepaid, at the following addresses:

(a) to the Vendee, at 1100 Centre Square East, 1500 Market Street, Philadelphia, Pa. 19102.

(b) to the Builder, at the address specified in Item 1 of Annex A hereto;

(c) to any assignee of the Vendor, or the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing

by such party to the other parties to this Agreement.

ARTICLE 21 Law Governing. This Agreement having been executed in the Commonwealth of Pennsylvania by one of the parties hereto, and having been delivered in said Commonwealth, all of the terms hereof, and all rights and obligations hereunder shall be governed by the laws of said Commonwealth; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 22 Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

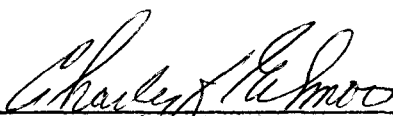
[CORPORATE SEAL]

Attest:




WHITTAKER CORPORATION (BERWICK
FORGE & FABRICATING DIVISION)

By


Authorized Signatory

NATIONAL RAILWAY UTILIZATION CORPORATION

[CORPORATE SEAL]

Attest:

F. W. Storz
Asst. Secretary

By

[Signature]
Vice President

COMMONWEALTH OF PENNSYLVANIA :

SS:

COUNTY OF COLUMBIA :

On this 27TH day of October, 1978, before me, personally appeared Charles J. Gilmore, to me personally known, who, being by me duly sworn, says that he is an officer of Whittaker Corporation (Berwick Forge & Fabricating Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Lloyd H. Adams
Notary Public

My Commission expires:

LLOYD H. ADAMS, NOTARY PUBLIC
BERWICK BORO, COLUMBIA COUNTY
MY COMMISSION EXPIRES SEPT. 19, 1982
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS:

On this 27th day of October, 1978, before me personally appeared John A. Marquette, to me personally known, who, being by me duly sworn, says that he is a Vice President of National Railway Utilization Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Darlene Marquette
Notary Public

My Commission expires:

DARLENE MARQUETTE
Notary Public, E.B. & F. Co.
My Commission Expires Sept. 13, 1982

Annex A

to

Conditional Sale Agreement

- Item 1: Whittaker Corporation (Berwick Forge & Fabricating Division), a California corporation, having an address at West 9th Street, Berwick, Pennsylvania 18603.
- Item 2: The Equipment shall be settled for in not more than two Groups delivered to and accepted by the Vendee.
- Item 3: The Builder warrants that the Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to materials incorporated therein specified by the Vendee and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Vendee, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective. In no event shall the Builder be liable to anyone for any incidental, special or consequential damages of any kind. The Vendee shall promptly notify the Assignee if any unit of Equipment is returned to the Builder for such purpose as aforesaid.

With respect to specialties not of its own specification, design and manufacture, the Builder herewith assigns to the Vendee all of Builder's rights under warranties of the manufacturer thereof.

EXCEPT AS STATED ABOVE IN THIS ITEM 3, THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXPRESSED OR IMPLIED, MADE BY THE BUILDER EXCEPT THE WARRANTIES SET OUT ABOVE AND IN

ITEM 4 HEREOF.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Vendee of any of its rights under this Item 3.

Item 4: Except in cases of articles or materials specified by the Vendee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and its assigns from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, its assigns or the users of the Equipment, because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee and its assigns every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs systems processes, formulae, combinations, articles or materials specified by the Vendee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and in respect of all such designs, systems, processes, formulae, combinations, articles or materials, the Vendee agrees to indemnify the builder to the same extent and purpose as the Builder agrees to indemnify the Vendee, as above stated. The Builder further agrees to execute and deliver to the Vendee or the users of the Equipment all and every such further assurance as may be

reasonably requested more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Vendee will give notice to the Builder and to the Vendor of any claim known to it from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

Item 5: The Maximum Purchase Price referred to in Article 4 of the Agreement is \$1,871,850.

Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$1,403,887.50.

Annex B
to
Conditional Sale Agreement

<u>Type</u>	<u>Builder's Specifica- tions</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
50'-6" 70-ton Box Cars, Type XM	Steel, single sheath, outside stake box car, with rigid underframe	Berwick, Pa.	50	M&NJ 120693-734 NSL 150275-282	\$ 37,437	\$1,871,850	10/27/78 at Renovo, Pennsylvania